



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 Punchbowl Street, Room 321  
Honolulu, Hawaii 96813

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### **Why the Legislature Should Not Override the Workers' Compensation Veto**

Governor Lingle vetoed S.B. 1808 because it would callously undo recently enacted administrative rules that bring long sought reform to Hawaii's workers' compensation system.

Here are the claims Legislators are making and here is the truth you deserve to know:

#### **Fiction: The new administrative rules will hurt injured employees**

**Fact:** At the hearing held by Representative Kirk Caldwell, several injured workers were brought forward to testify about how the workers' compensation system failed them. Missing in all this discussion was the fact that these people were injured in the old system—the same system that the proponents of a veto override seek to reinstate. These injured employees were not harmed by the enactment of the new rules, but by the very system we are seeking to change. Why would we want to go back to a system that has failed and has only harmed injured workers?

The Administration has mandated the use of evidence based treatment guidelines to ensure that workers like these are given medical care proven to affect the best outcomes.

#### **Fiction: Evidence based medical treatment guidelines would not work for Hawaii's non-white population.**

**Fact:** Evidence-based treatment guidelines are color blind. Are we really going to argue that doctors should be treating a back strain of a person of Asian or Pacific Islander descent differently from a back strain of a person from the rest of the United States? It is unfortunate that proponents are perpetuating this fiction and advancing such an insulting argument without any medical basis. The University of Hawai'i football team is one of the most ethnically diverse college football teams. As fans have witnessed, UH trainers treat all ankle or back injuries without any regard to a player's ethnicity. This is how work place injuries should also be treated.

#### **Fiction: Evidence-Based Treatment Guidelines Preclude Alternative Medicine**

**Fact:** Again, this is untrue. The evidence based treatment guidelines we have adopted include massage therapy, chiropractic, acupuncture, and other recognized treatment alternatives. They are included because scientific evidence supports their use.

**Fiction: The new administrative rules violate the separation of powers doctrine**

**Fact:** This is simply untrue. Before the Governor can implement any new rules, they must be extensively scrutinized and reviewed by the Attorney General to test their legality. The Attorney General has already put the Administration's rules through this test and has not found them to violate any of the existing laws.

**Fiction: There is a workers' compensation study authored by a local professor that refutes the Administration's assertions of problems in the workers' compensation system**

**Fact:** The author has manipulated data from the State Insurance Commissioner and compared it to the Department of Labor and Industrial Relation's (DLIR) data and issued a conclusion about a relationship between reduced benefits and higher insurance premiums.

The DLIR collects data on all workers' compensation costs (self-insured, insured, and the non-insured). This is different from the Insurance Commissioner who collects data relating only to insurance. The problem is that the author is comparing apples with horseshoes to substantiate a presupposed conclusion.

The author of this "study" is not an independent academic, but someone who has expressed a strong anti-reform bias throughout his career.

**Fiction: The Administration cannot prove that the new rules will save \$98 million**

**Fact:** People who have an intimate knowledge of Hawaii's workers compensation system told the House Labor Committee that there will be cost savings as a result of these rule changes. However, they were unable to put an exact figure because it would be dependent on the execution and administration of these rules. No one refuted that we could achieve the same cost savings realized by California.

Based on the enactment of medical guidelines in California, the University of California at Berkeley estimated a cost savings of anywhere from 36.7% to 53.4%. We stated that Hawai'i could realize the same type of cost savings, a mid range figure of 37% or \$98 million. In 2002, the workers' compensation system (insured, non-insured, self-insured) spent \$267.8 million in total costs, \$105.9 million in medical costs, and \$130.3 million in certain indemnity payments (wage replacement "TTD" and disability "PPD").

The DLIR applied a University of California-Berkeley study that noted that the use of evidence based treatment guidelines would save medical costs in California around 36.7% to 53.4%. Using these same estimates and applying these cost savings to Hawai'i, we estimated that Hawai'i will save anywhere from \$49 million to \$67 million in medical costs.

The DLIR also estimated additional cost savings as a result of using evidence based treatment guidelines, which reduce the amount of time workers remain out of work. This will allow them to return to work faster to earn their full salary and consequently reduce their temporary total disability (wage replacement). Evidence based treatment guidelines also reduce over-utilization and improper and excessive treatments that are harmful to injured workers. Accordingly, the number of

individuals on permanent partial disability would likely decrease, resulting in a reduction of disability payments (permanent partial disability).

Nationwide studies establish that Hawai'i doubles the national average in the number of workers who receive permanent partial disability and temporary total disability. If Hawai'i reduces this number to the national average, the savings would amount to \$77.8 million. This leaves the State of Hawai'i the possibility of savings ranging from \$91.3 million to \$108.9 million, giving it a midrange savings of \$98 million. This is real money that could be better used to pay workers' salaries and increase benefits.

If the Legislators override S.B. 1808, they will reinstate a system that harms injured workers and drives costs to insurmountable heights for Hawaii's employers. It is a system that has been rated an "F"—a failure in every sense of the word. It is time the Legislature stop perpetuating failure and instead let genuine reform prevail.